ought to be corrected, and that the whole judgment should not be set aside because of a mistake to the insignificant amount of 12s. I do not think that by so amending the judgment any of the rules or any principle of law is infringed. For these reasons I think that the appeal should be dismissed.

Very recently, the Court of Appeal in England in the case of *Navimprex Centrala Navala* v *George Moundreas & Co SA*[3] held that under O 20 r 11 of the Rules of Supreme Court (which is in pari materia with O 20 r 11 here) the court had jurisdiction to correct mistake in the judgment which had arisen out of an accidental slip or omission made by the plaintiffs or their advisers. In that case, judgment in default entered against the defendants contained an error caused by the failure of the plaintiffs or their solicitors to inform the court of the two items of the claim totalling $63,400, which should have been excluded, and in consequence the judgment sum exceeded the amount to which the plaintiffs were entitled. The defendants applied to have the judgment set aside and the plaintiffs applied to have it amended so as to exclude the two items and to reduce the judgment sum accordingly. Mustill J (as he then was) amended the judgment, which was for an amount of over $1,000,000, by reducing it by a sum of $63,400 under O 20 r 11. His decision was affirmed on appeal by the Court of Appeal.

Apart from the irregularity, the defendant before the learned registrar and before me had not shown any defence on the merits. It was contended by counsel for the defendant that the plaintiffs had sold the shares of the defendant at a price or prices very much below the market value and this was a point of dispute between the plaintiffs and the defendant. I rejected this argument. Apart from a bare allegation made to this effect, the defendant had not provided any material in support. At any rate, assuming that there was any ground for such a dispute with the plaintiffs, that was not a defence to the plaintiffs' claim for the balance due and owing. The defendant is at liberty to initiate fresh proceedings against the plaintiffs for damages for breach of the agreement with regard to the holding of the shares as security and for negligence in the sale of the shares.

In the circumstances, the defendant was not entitled to be given leave to defend, and as the plaintiffs had applied to amend the judgment by reducing the appropriate amount the only and proper course to take is to amend the judgment on terms as the learned registrar did.

Order accordingly.

Solicitors: *Lee & Lim; Lee Williams & Associates.*

Reported by *Ng Sheau Jiuan*

Tan Bok Eng v Lim Meng Kok

HIGH COURT (SINGAPORE) – DISTRICT COURT APPEAL NO 24 OF 1987
THEAN J
2 JUNE 1988

Tort – Negligence – Road accident – Inference of negligence – Defendant to rebut

The plaintiff, who was the pillion rider of a motorcycle ridden by the second defendant, was injured when the motorcycle collided with a taxi driven by the first defendant. The plaintiff claimed damages for negligence against the defendants. The claim against the first defendant proceeded to trial in the district court. At the conclusion of the trial, the court dismissed the plaintiff's claim holding that the plaintiff had failed to prove that the road accident was caused by the negligence of the first defendant. Against that decision, the plaintiff appealed.

Held, allowing the appeal: (1) The trial court had misdirected itself in law. On the facts, the proper inference to be drawn is that the collision was caused either by the negligence of both the defendants or by the negligence of the first or second defendant. It is for the first defendant to rebut this inference of negligence on his part. The trial court should have considered whether on the evidence the first defendant had succeeded in displacing the case against him.

(2) On a review of the evidence, the first defendant was in part to blame for the accident. The claim of the plaintiff against the first defendant must succeed.

Cases referred to

1 *Baker* v *Market Harborough Industrial Cooperative Society Ltd* [1953] 1 WLR 1472 (refd)
2 *France* v *Parkinson* [1954] 1 All ER 739 (refd)
3 *Loh Saik Pew* v *Tan Huat Chan* [1976] 2 MLJ 1 (refd)

CP Lee for the appellant.
Wong Ching Hoong for the respondent.

Cur Adv Vult

Thean J: On 25 January 1984 at about 11.15 pm, the plaintiff, who was then an infant, was riding on the pillion of a motorcycle, JAV 2966, ridden by the second defendant; they were travelling along Clementi Road towards Upper Bukit Timah Road. They reached the traffic-controlled junction of Clementi Road and Clementi Avenue 2, and while they were crossing the junction and going straight towards Upper Bukit Timah Road, a motor taxi, SHA 152 U, driven by the first defendant and coming from the opposite direction, entered the junction, turned right going towards Clementi Avenue 2 and collided with the motorcycle, in consequence of which the plaintiff sustained injuries. He brought this action, suing by his father and next friend, against the first and second defendants, claiming damages for negligence on the part of both or either of the defendants. The second defendant did not defend the claim and interlocutory judgment was entered against him. The claim against the first defendant was, however, resisted and proceeded to trial.

At the hearing before the district judge, the quantum of damages was agreed upon, namely, $9,750 for general damages and $250 for special damages, leaving only the question of liability to be tried. At the conclusion of the hearing, the learned district judge dismissed the claim of the plaintiff, holding that he (the plaintiff) had failed to prove that the accident was caused by the negligence of the first defendant. Against that decision, this appeal was brought, and at the conclusion of the hearing I allowed the appeal, set aside the judgment of the learned district judge and entered judgment for the agreed amount against the first defendant.

In coming to his conclusion that the plaintiff had failed to discharge the burden, the learned district judge said:

> The first question to be considered by the court is: what was the condition of the traffic lights when the defendant was making a right turn into Clementi Avenue 2. The defendant said that when the traffic lights turned green, he drove his taxi forward and stopped to give way to oncoming traffic. When the green arrow came on then he started to turn right. Was the defendant telling the truth? Unfortunately, there is no evidence to say otherwise. The plaintiff, who is a very truthful witness, has said that he did not know the state of the traffic lights when his motorcycle was crossing the junction. If the defendant is to be believed, then it means that the plaintiff's motorcycle was beating the red traffic light at the material time.
>
> Furthermore, the plaintiff has admitted that he did not know how the accident happened. The rider of the motorcycle on which the plaintiff was a pillion rider was not called to give evidence because his whereabouts are not known. His evidence would be vital for the plaintiff to prove, on a balance of probabilities, that the defendant has been negligent in driving his motor taxi on the day and time in question. However, this piece of evidence is missing.

In my opinion, the learned district judge, with respect, had misdirected himself in law. The plaintiff was an innocent pillion rider on the motorcycle ridden by the second defendant and he sustained injuries in the accident, which was a collision between this motorcycle and the motor taxi driven by the first defendant coming from the opposite direction. On these facts, the proper inference to be drawn is that the collision was caused either by the negligence of both the defendants or by the negligence of the first defendant or the second defendant. It is for the first defendant to rebut this inference of negligence on his part. In *Baker* v *Market Harborough Industrial Co-operative Society Ltd*[1] a collision between two vehicles proceeding in opposite directions occurred at or near the centre of the road during the hour of darkness. The Court of Appeal in England held that in the absence of any evidence to the contrary, the inference was that both drivers were equally to blame for the accident. Lord Denning MR in his judgment said, at p 1476:

> It is pertinent to ask, what would have been the position if there had been a passenger in the back of one of the vehicles who was injured in the collision? He could have brought an action against both vehicles. On proof of the collision in the centre of the road, the natural inference would be that one or other or both were to blame. If there was no other evidence given in the case because both drivers were killed, would the court, simply because it could not say whether it was only one vehicle that was to blame or both of them, refuse to give the passenger any compensation? The practice of the courts is to the contrary. Every day, proof of the collision is held to be sufficient to call on the two defendants for an answer. Never do they both escape liability. One or other is held to blame, and sometimes both. If each of the drivers were alive and neither chose to give evidence, the court would unhesitatingly hold that both were to blame. They would not escape simply because the court had nothing by which to draw any distinction between them. So, also, if they are both dead and cannot give evidence, the result must be the same. In the absence of any evidence enabling the court to draw a distinction between them, they must be held both to blame and equally to blame.

In *France* v *Parkinson*,[2] the plaintiff's and the defendant's motor cars were involved in a collision at crossroads. The collision took place in the middle of the roads and each car was on the right side of the road. At the time of the accident the plaintiff's car was driven by one Fitzgerald, to whom the plaintiff had hired the car. Fitzgerald disappeared soon after the accident. The plaintiff claimed against the defendant for damages for negligence and Fitzgerald was not called as a witness. At the conclusion of the plaintiff's case, the defendant called no evidence and the trial judge held that the plaintiff had not proved negligence against the defendant. On appeal, his decision was reversed. The Court of Appeal held that the evidence raised a prima facie case of negligence against the defendant which he had not displaced. Somervell LJ said, at p 740:

> ... it is not disputed that the plaintiff was in the same position as a passenger, and, therefore, even if the driver of the car had been negligent, so long as the plaintiff can establish some negligence on the defendant's part he could claim all his damages. I think, therefore, there was a *prima facie* case against the defendant on which the court should have found him negligent in the absence of any evidence given by him.

In the instant case, there was no dispute that there was a collision between the motorcycle ridden by the second defendant and the motor taxi driven by the first defendant at the junction of Clementi Road and Clementi Avenue 2, and the plaintiff was the pillion rider of the motorcycle. There was, therefore, a prima facie case of negligence against both the defendants or either of them, and as against the first defendant it is for him to displace it. The first defendant did give evidence, and the learned district judge should then consider whether on the evidence the first defendant had succeeded in displacing the case against him. In my opinion, the learned district judge did not evaluate the evidence on this basis.

On a review of the evidence it seems to me that the first defendant was in part to blame for the accident. The

first defendant said that when he reached the junction he stopped, as the traffic light was red, and when the traffic light turned green, he drove his motor taxi forward and stopped to give way to oncoming vehicles. When the green arrow light came on, he saw two motorcycles coming from the opposite direction and he started to turn right; he did not give way to them. He said that they should stop. At that moment he could, and should, have stopped and refrained from turning right, thus avoiding the accident, and, in my view, in this respect the first defendant was at least, and probably to a lesser extent than the second defendant, partly to blame for the accident. In this connection, it should be borne in mind that even if the extent of his blame for the accident was only 1%, the first defendant would still be a joint tortfeasor with the second defendant and vis-à-vis the plaintiff would be wholly liable.

In *Loh Saik Pew* v *Tan Huat Chan*,[3] there was a collision between a motorcycle ridden by the plaintiff and a motor van driven by the defendant at the junction of Geylang Road, Aljunied Road and Lorong 22. The motorcycle entered the junction after the traffic light had turned green and in crossing the intersection, he was knocked down by the motor van from the right. The Court of Appeal held that though the motorcycle was entitled to enter and cross the junction, he should have kept a lookout, which he did not, for the motor van from the right which had properly entered the junction, and if he had kept a lookout he would have seen the motor van and would have been able to take effective steps to avoid the accident, and accordingly held that the motorcyclist was partly to blame for the accident. Chua J, delivering the judgment of the court, said at p 2:

> We are of the view that although the respondent was entitled to proceed and enter the junction immediately the lights turned green in his favour, he should in his own interest have kept a lookout for vehicles coming from the direction of Aljunied Road in case some vehicle which had properly entered the crossroads might still be passing across. If he had looked to his right when moving off from the stop line, he would have seen the appellant's motor van coming and would have been able to take effective steps to avoid a collision. We hold that, in all the circumstances prevailing, the respondent had contributed to this accident.

Clearly, in the circumstances of this case, the claim of the plaintiff against the first defendant must succeed, and I accordingly reversed the order made below.

Order accordingly.

Solicitors: *CP Lee & Co*; *Wu & Wong*.

Reported by *Ng Sheau Jiuan*

Swee Leong Cheng v Project Aqua Culture & Trading Co Pte Ltd

HIGH COURT (SINGAPORE) – ORIGINATING PETITION NO 71 OF 1986
CHAN SEK KEONG JC
27 MAY 1988

Companies and Corporations – Failure of company to lodge with Registrar of Companies such prescribed forms to effect resignation of directors – Failure of company to enter transfer of shares in the share register – Default of company to hold annual general meeting and to file its annual return – Criminal offence – Petitioner sole remaining director of defunct company – Liability of petitioner – Companies Act (Cap 50, 1985 Ed), ss 143, 175, 197, 391 & 408(3)

The petitioner is a director of the respondent company which was incorporated on 7 September 1981 as a private exempt company. The petitioner, who was a regular military officer and had no knowledge or experience of business practices, became the sole remaining director as well as the managing director after other directors ('the retired directors') retired and sold their shares to him. The petitioner failed to make the requisite entries in the statutory books of the company to reflect these changes. As a result, on 8 January 1988, summonses were issued under ss 175 and 197(4) of the Companies Act ('the Act') against each of the retired directors (and also the petitioner) for being a party to the default of the company in failing to hold its 1983 and 1984 annual general meetings and also in failing to lodge the annual returns for the same years. This led to the proceedings in originating summons no 87 of 1986 in which the retired directors obtained, inter alia, an order of court dated 25 July 1986 ('the said order') declaring that they had ceased to be directors since October 1981.

In this petition, the petitioner applied for the following reliefs under s 391 of the Companies Act (Cap 50, 1985 Ed):

(a) from any liability for fines and penalties which he may have incurred under s 143 of the Act or otherwise by reason of his negligence, default or breach of duty in having been a party to the default of the company in failing to hold its 1983 annual general meeting and, under prayer (c), its 1984 annual general meeting;

(b) from any liability for fines and penalties which he may have incurred under s 175 of the Act or otherwise by reason of his negligence, default or breach of duty in having been a party to the default of the company in failing to lodge the annual return for year 1983 with the Registrar of Companies within one month after the annual general meeting; and, under prayer (d), in failing to lodge the annual return for the year 1984 as aforesaid;

(c) from complying with the said order ordering the petitioner to lodge the relevant return giving effect to the resignations of the retired directors and to effect the necessary alterations in the statutory books of the company.

The petitioner's main ground was that he had sold all his shares in the company in February 1982 and had given all the books and materials relating to the company to the buyer.

Held, dismissing the petition: (1) The power to grant relief under s 391(1) of the Act may only be exercised by the court before which the proceedings are taken. On this ground alone, and without going into its merits, prayers (a), (b), (c) and (d) of the petition must be dismissed.